

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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Amendment of the Commission's Rules)	DA 99-2624
Regarding the 37.0-38.6 GHz and)	ET Docket No. 95-183
38.6-40.0 GHz Bands)	
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Comments of the Office of Advocacy, U.S. Small Business Administration

The Office of Advocacy of the United States Small Business Administration ("Advocacy")¹ respectfully submits these Comments to the *Public Notice* issued November 23, 1999, in the above-captioned proceeding, regarding procedural issues related to the upcoming spectrum auction for the 39 GHz band, scheduled to begin April 11, 2000.

Advocacy is troubled by the Federal Communications Commission's ("Commission") apparent decision to auction this service according to Economic Areas ("EAs"), rather than Basic Trading Areas ("BTAs"), as the Commission originally proposed.² Advocacy notes that the sole stated reason for this decision relates to complications arising from Rand McNally's copyright interest in BTAs, which might delay the 39 GHz spectrum auction. While Advocacy understands the Commission's interest in assigning this spectrum without unnecessary delay,

¹ Congress established Advocacy in 1976 by Pub. L. No. 94-305 to represent the views and interests of small business within the Federal government. (Codified as amended at 15 U.S.C. §§ 634 a-g, 637.) Advocacy serves as a focal point for concerns regarding the government's policies as they affect small business, develops proposals for changes in Federal agencies' policies, and communicates these proposals to the agencies. (See 15 U.S.C. § 634c(1)-(4).) Advocacy also monitors agency compliance with the RFA and reports this to Congress.

² "[W]e determined that BTAs were the most appropriate geographic areas for the types of services envisioned for the 39 GHz band." *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, Memorandum Opinion and Order*, ET Docket No. 95-183, FCC 99-179, rel. July 29, 1999, para.46.

Advocacy believes that this is an inadequate rationale for adopting a much larger geographic licensing area. There are approximately 175 EAs and EA-like areas in the country, in contrast to the 493 BTAs or BTA-like areas. EAs contain rural, urban, and suburban areas, while BTAs, being smaller, are more targeted to rural or urban areas, and may be better suited for small business needs. If the Commission finds that using BTAs will unacceptably delay the spectrum auction, Advocacy would urge the Commission to explore other geographic areas, such as Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”) that more closely approach the size of BTAs. Making a jump from BTAs to the larger EAs risks limiting small business’s ability to compete with large business in the spectrum auction. To make this jump for simply procedural reasons, that may not justify the negative impact on small business, is irresponsible.

MSAs and RSAs would more closely approximate BTAs and would permit small businesses to compete for precisely the type of area that they wish to serve. While EAs could later be partitioned, and rural areas could be transferred to small businesses that wish to serve them, small businesses may be forced to pay considerably more for these areas than they would have if the rural areas were auctioned discreetly, and not part of an EA containing more valuable urban areas. And from a cost standpoint it may not be possible for small businesses to compete for whole EAs, particularly if their business plans only include a portion of the EA. Small businesses may be forced, from a practical point of view, to wait until the spectrum has been auctioned and try to pick off rural areas from EAs. Small businesses will have a greater opportunity to obtain licenses for the areas they wish to serve if they can compete for these licenses at the auction stage. Small businesses may well find it economically preclusive to attempt to compete at auction, with presumably higher dollar amounts, for EAs that they are not

prepared to serve.

Advocacy urges the Commission to choose smaller geographic areas than EAs by which to auction spectrum at 39 GHz.

Respectfully submitted,

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December 8, 1999